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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,986	07/25/2001	Rajarshi Das	YOR920010349US1	8166
35526	7590	08/11/2006	EXAMINER	
DUKE, W. YEE				DASS, HARISH T
YEE & ASSOCIATES, P.C.				ART UNIT
P.O. BOX 802333				PAPER NUMBER
DALLAS, TX 75380				3693

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/915,986	DAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Harish T. Dass	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 May 2006.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8,11-28,31-41 and 44-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8,11-28,31-41 and 44-49 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***DETAILED ACTION***

Claims 9-10, 29-30, 42-43 are canceled.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 12-28, 32-41, 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over PGPUB - US 2002/0016759 to Macready et al (hereinafter Macready) in view of US 6,401,080 to Johnson et al (hereinafter Johnson) and US 6,338,050 to Conklin et al. (hereinafter Conklin).

Re. Claim 1, Macready discloses a system, method and apparatus, storing one or more rules identifying strategic selling policies (preferences) in a storage device in the computer system and storing attributes for the product or service to be sold in a storage device in the computer system [Abstract; Figure 3; paragraphs (para.) 0002 (seller capability), 0009 (decision), 0017 (attributes), 0056, 0125: 0142; 0211; 0157, 0278-0281, 0297; 0303],

automatically determining an initial offer of sale for the product or service, automatically providing the initial offer of sale to a customer, and obtaining history information regarding the product or services, and determining acceptable terms of sale

based on the history information [page 26 claim 109; para. 0003; 0048; 0211; 0278; 0360 (see bad past experience)].

Macready does not explicitly disclose automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the one or more rules, and the one or more attributes of the product or service, and receiving a modification, which was made by the customer, to the terms of sale, and the negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale.

However, Johnson discloses automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the one or more rules, and the one or more attributes of the product or service [C1 L44-L58; C4 L66-L67; c6 L17-L22, L57-L64; C14 L10-L25 – see moderator = automatic negotiator] to obtain wholesale price with best economic value by automatic auction system. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Macready and include automatically negotiating, by negotiating engine in the computer system, terms of sale the product or service based on initial offer of sale, the acceptable terms of sale based on the history information, the one or more rules, and the one or more attributes of the product or service, as disclosed by Johnson, to provide an electronic auction system with negotiation engine to obtain best price for the product. Conklin discloses receiving a modification, which was made by the customer, to the terms of sale, and negotiating

engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale [Abstract; col. 12 lines 28-45; col. 14 lines 1-40; col. 19 lines 28-37 and claim 21] to provide a system and method for iterative bargaining and purchasing over a network which enabled the buyer to negotiate the terms and conditions iteratively until the sale agreement is reached. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Macready and Johnson and include receiving a modification, which was made by the customer, to the terms of sale, and negotiating engine automatically negotiates by determining and providing a counteroffer to each modification of the terms of sale made by the customer until the customer and the negotiating engine agree to mutually acceptable terms of sale, as disclosed by Conklin, to provide negotiation system to enable the seller to submit counteroffer to buyer until the sale is concluded.

Re. Claim 2, Macready discloses wherein the *one or more* rules include *one or more* rules directed to at least *one of* an identification of the types of products or services that are to be sold over a specified period of time, preferred terms and conditions of sale, preferred shipping or delivery policies (variation in *delivery* time as a function of *price*) [paragraph 0034].

Re. Claim 3, Macready discloses wherein the *one or more* attributes includes at least

*one of a minimum price to be paid for the product or service, a minimum number of products or services for purchase, sets of products or services that may be offered as substitutes for each other, information about relative valuations or tradeoffs among products or services, information for determining tradeoffs among imperfectly substitutable products or services, information for determining tradeoffs between product or service prices, order size, and delivery times, information for determining tradeoffs between product or service prices and vendor preferences, thresholds for minimum acceptable quality measures* [paragraph 0014, 0306].

Re. Claims 4-8, Macready discloses 4. The *method* of claim 1, wherein the product or service is associated with a multi-attribute utility function that describes an interrelation between multiple attributes of the *one or more* attributes, wherein the *one or more* attributes are dynamically set (price), wherein the *one or more* attributes are fixed (colors), wherein at least *one of the one or more* attributes is dynamically set and at least *one of the one or more* attributes is fixed, and wherein a value of at least *one of the one or more* attributes is automatically set (price quote) [paragraph 0007,0014-0017].

Re. Claims 12-13, Macready discloses wherein automatically negotiating terms of sale of the product or service includes obtaining exogenous preference information for a customer, and determining acceptable terms of sale based on the exogenous preference information (different utility), wherein the exogenous preference information

includes at least *one of* identification of known (preferred color), or previous customers that are preferred, identification of known or previous customers that are to be avoided, rank ordering of customers, and rank ordering of customers to prefer for the product or service [paragraph 0016].

Re. Claim 14, Macready discloses wherein automatically negotiating terms of sale of the product or service includes obtaining information about *one of* the product or service and the customer from a third party and determining acceptable terms of sale based on the obtained information [paragraph 0036, 0138].

Re. Claim 15, Macready discloses wherein negotiating terms of sale of the product or service includes at least *one of* using a price setting *method*, using an automated bidding *method*, and haggling over terms of sale of the product or service [paragraph 0006].

Re. Claim 16, Macready discloses wherein negotiating terms of sale of the product or service includes negotiating based on *one or more* negotiation parameters including at least *one of* thresholds on minimum acceptable price (whether or not he wants to be above or below that threshold) [paragraph 0306, 0142].

Re. Claim 17, Macready discloses further comprising storing a record of the sale [paragraph 0142].

Re. Claim 18, Macready discloses wherein automatically providing the initial offer of sale to the customer includes updating an on-line catalog listing for the product or service based on the initial offer of sale [paragraph 0007, 0279].

Re. Claim 19, Macready discloses wherein automatically providing the initial offer of sale to the customer includes transmitting the initial offer of sale to the customer prior to the customer requesting the initial offer of sale for the product or service (online catalog) [paragraph 0008, 0279, 0312].

Re. Claim 20, Macready 20. The *method* of claim 1, wherein the *method* is implemented in a distributed data processing system (*internet and coupled to the economic hub serves*) [paragraph 0295-0297, 0303].

Re. Claim 21, system claim 21 is rejected with same rational as claim 1, system of Macready includes a computer readable medium capable of storing computer instructions of method claimed.

Re. Claim 22, system claim 22 is rejected with same rational as claim 2.

Re. Claim 23, system claim 23 is rejected with same rational as claim 3.

Re. Claim 24, system claim 24 is rejected with same rational as claim 4.

Re. Claim 25, system claim 25 is rejected with same rational as claim 5.

Re. Claim 26, system claim 26 is rejected with same rational as claim 6.

Re. Claim 27, system claim 27 is rejected with same rational as claim 7.

Re. Claim 28, system claim 28 is rejected with same rational as claim 8.

Re. Claim 32, system claim 32 is rejected with same rational as claim 12.

Re. Claim 33, system claim 33 is rejected with same rational as claim 13.

Re. Claim 34, system claim 34 is rejected with same rational as claim 14.

Re. Claim 35, system claim 35 is rejected with same rational as claim 15.

Re. Claim 36, system claim 36 is rejected with same rational as claim 16.

Re. Claim 37, system claim 37 is rejected with same rational as claim 17.

Re. Claim 38, system claim 38 is rejected with same rational as claim 18.

Re. Claim 39, system claim 38 is rejected with same rational as claim 19.

Re. Claim 40, system claim 40 is rejected with same rational as claim 20.

Re. Claim 41, apparatus claim 41 is rejected with same rational as claim 1.

Re. Claim 44, apparatus claim 44 is rejected with same rational as claim 12

Re. Claim 45, apparatus claim 45 is rejected with same rational as claim 14.

Re. Claim 46, apparatus claim 46 is rejected with same rational as claim 15.

Re. Claim 47, apparatus claim 47 is rejected with same rational as claim 17.

Re. Claim 48, apparatus claim 48 is rejected with same rational as claim 18.

Re. Claim 49, apparatus claim 49 is rejected with same rational as claim 18.

Claims 11 and 31 are under 35 U.S.C. 103(a) as being unpatentable over Macready in view of Johnson and Conklin, as applied claim 1 and claim 21 above, further in view of Kansal (US 6,647,374).

Re. Claim 11, Macready or Johnson does not explicitly disclose wherein the history information includes at least *one of* production costs for the product or service, prices of similar or competing products or services, current or past sales and income on different products or services, estimates of historical measures of customer demand for the product or service, and customer click stream history. However, Kansal discloses these features [Abstract; C2 L19-L40; C3 L39-L67; C4 L12-L16] to evaluate the reliability, performance and probability of vendor's default for delivery of a product. It would have been obvious to one of ordinary skill in the art at the time the Applicant's invention was made to combine disclosures Macready, Johnson, Conklin and Kansal to provide vendor's historical reliability with respect to other vendors to determine appropriate vendor.

Re. Claim 31, system claim 31 is rejected with same rational as claim 11.

### ***Response to Arguments***

2. Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Harish T Dass  
Examiner  
Art Unit 3693

7/31/06



ELLA COLBERT  
PRIMARY EXAMINER



## ESCALATION CLAUSE

SPECIAL PROVISIONS attached to and hereby made a part thereof, this Offer dated \_\_\_\_\_ on Lot/Parcel/Condominium Unit \_\_\_\_\_, Block/Square \_\_\_\_\_, Parking Space \_\_\_\_\_, Subdivision/Condominium Project \_\_\_\_\_, located at \_\_\_\_\_, between \_\_\_\_\_ (Seller) and \_\_\_\_\_ (Buyer):

The following provisions are incorporated into the referenced Offer and shall supersede any provisions to the contrary contained in said Offer:

1. The following terms will apply to increase the Sales Price in this Offer:
  - A. In the event that Seller receives one or more additional bona fide offers to purchase the Property with terms acceptable to Seller (the "Other Offers"), but which result in net proceeds of sale payable to the Seller equal to or greater than the net proceeds of sale payable to the Seller under this Offer, then the sales price stated in this Offer shall automatically increase to an amount which generates net proceeds of sale to Seller equal to \$ \_\_\_\_\_ (the "Escalating Factor") in excess of the highest net proceeds of sale generated in such Other Offers.
  - B. The sales price under this Offer shall in no event exceed \$ \_\_\_\_\_ (the "Cap").
  - C. In the event that Other Offers cause the escalation of the Sales Price in this Offer, the Seller will provide the Buyer with a copy of sufficient documentation to justify the Sales Price increase.
  - D. The Buyer acknowledges that the Escalating Factor of this Offer and the Escalating Factors of Other Offers may result in multiple escalations and, in some cases, escalation to the Cap.
2. In the event the Buyer will be financing a portion of the Sales Price and this Escalation Clause causes an increase in the Sales Price under this Offer, (check one):  
 the loan amount provided for in this Offer shall remain the same, and the Buyer shall pay any increase in cash at the time of settlement; or  
 the loan amount provided for in this Offer shall automatically increase to be \_\_\_\_\_ % of the new Sales Price of the Property; or

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the loan amount shall not exceed \_\_\_\_\_ and the Buyer shall pay any amount of the increase in Sales Price which is not included in the loan amount in cash at the time of settlement.

3. The terms contained herein are for the use and purpose of obtaining a mutually agreeable Sales Price and shall be deemed satisfied and will terminate upon ratification of a Contract for the above-captioned property.
4. Buyer acknowledges and affirms that this Offer and Escalation Clause has been made of his/her own volition and at his/her own discretion and both Buyer and Seller agree to hold agents and their Brokers harmless with regard to negotiation of the Sales Price. In the event Other Offers are presented on this Property, Buyer acknowledges that a copy of the documents constituting this Offer may be provided to the parties making such Other Offers.
5. In the event that the Seller agrees to accept a Sales Price within the terms of this Offer and pursuant to this escalation clause, the Seller will submit to the Buyer a copy of this Offer, with the Sales Price adjusted according to the escalation provisions contained herein, having been fully executed by the Seller ("Counteroffer"). Acceptance of the Counteroffer will occur upon counter signature and initial of the modified terms of this Offer, by the Buyer, and delivery to the Seller of the fully ratified Contract.

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Buyer \_\_\_\_\_ Date \_\_\_\_\_

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Buyer \_\_\_\_\_ Date \_\_\_\_\_